

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

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**August 30, 2005**

**PATRICK FISHER**  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

LEWIS ELSWORTH McNACK,

Defendant-Appellant.

No. 04-5012

(D.C. No. 03-CR-102-C)

(N.D. Okla.)

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**ORDER AND JUDGMENT\***

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Before **EBEL, McKAY**, and **HENRY**, Circuit Judges.

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After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Defendant pled guilty to one count of bank robbery in violation of 18 U.S.C. § 2113(a). The district court sentenced him to one hundred seventy-eight (178) months of incarceration followed by a three (3) year term of supervised

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

release. Defendant filed a timely notice of appeal of the “judgment and sentence filed of record [sic] in this case on January 13, 2004.” Rec., Vol. 1, Tab. 34 at 1. Thereafter Defendant’s counsel filed a brief following the mandate of *Anders v. California*, 386 U.S. 738 (1967), accompanied by a request to withdraw as counsel.

According to counsel, there are no arguable appealable issues. Aplt. *Anders* Br. at 5. We have reviewed the record on appeal and conclude that counsel is correct that there are no nonfrivolous issues that can be raised; nothing indicates that the plea agreement was not entered into knowingly and voluntarily or that the sentence was calculated incorrectly. Counsel’s brief contains a certificate of service certifying that Defendant was furnished with a copy of counsel’s brief on May 17, 2004. *Id.* at 7. Defendant has not filed a brief indicating disagreement with his counsel’s position. We therefore GRANT counsel leave to withdraw and AFFIRM the district court’s decision.

AFFIRMED.

Entered for the Court

Monroe G. McKay  
Circuit Judge